

1

UNITED STATES BANKRUPTCY COURT

3 | SOUTHERN DISTRICT OF NEW YORK

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## 6 In the Matter of:

7 THREE ARROWS CAPITAL, LTD AND Main Case No.

8 CHRISTOPHER FARMER, 22-10920-mg

9 | Debtor.

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United States Bankruptcy Court

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New York, New York

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New York, New York

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March 2, 2023

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2:00 PM

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21 | B E F O R E :

22 HON. MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 | ECRO: F. FERGUSON

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2 Hearing Using Zoom for Government RE: Foreign Representatives  
3 of Three Arrows Capital, Ltd.s Motion for an Order Compelling  
4 Compliance with Subpoena (Doc # 69, 72, 75)

5

6 Hearing Using Zoom for Government RE: Motion For Authorization  
7 To File Under Seal (I) The Declaration Of Alex M. Englander In  
8 Support Of The Foreign Representatives' Motion For An Order  
9 Compelling Compliance With Subpoena; And (II) The Declaration  
10 Of Russell Crumpler In Support Of The Foreign Representatives'  
11 Motion For An Order Compelling Compliance With Subpoena (Doc  
12 #85)

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15           BY:    MARK BRUH, ESQ.

16  
17  
18  
19           ALSO PRESENT:

20           RUSSELL CRUMPLER, Foreign Representative, Teneo (BVI) Ltd  
21  
22  
23  
24  
25

# 1 PROCEEDINGS

2 THE CLERK: All right. Calling Three Arrows Capital  
3 Limited, case number 22-10920. All right. Some of the parties  
4 are joining. All right.

5           If we could start with counsel from Latham and  
6 Watkins, if you could unmute one at a time and give your  
7 appearance for the record? Again, counsel from Latham and  
8 Watkins, if you could unmute one at a time and give your  
9 appearance for the record?

10 MR. MOHEBBI: Sure. You have Nima Mohebbi and Emily  
11 Orman from Latham.

12 THE CLERK: All right. Thank you. And then counsel  
13 from Holland and Knight?

14 MR. ENGLANDER: Good afternoon. You have Alex  
15 Englander from Holland and Knight.

16 THE CLERK: All right.

17 Mr. Crumpler?

18 MR. CRUMPLER: Good afternoon. Mr. Crumpler here.  
19 I'm just having some trouble starting my video, Your Honor.

20 THE COURT: Okay.

21 THE CLERK: All right. And then counsel for Venable.

22 MS. STROHBEHN: Good afternoon. Xochitl Strohbehn,  
23 Venable, LLP.

24 THE CLERK: And Mr. Brush?

25 MR. BRUH: Good afternoon. Mark Bruh for the United

1 States Trustee.

2 THE COURT: Okay. Who is Venable representing?

3 MS. STROHBEHN: We're just here on behalf of an  
4 interested party.

5 THE COURT: Okay.

6 MS. STROHBEHN: We haven't entered an appearance, Your  
7 Honor.

8 THE COURT: Okay. That's why -- I wasn't sure why.  
9 Okay.

10 MS. STROHBEHN: Thank you.

11 THE CLERK: Yeah. There's a party with a JN121008  
12 number. Is that a conference room? Judge, should I just leave  
13 them?

14 UNIDENTIFIED SPEAKER: Just observing, Your Honor.

15 THE CLERK: Pardon?

16 UNIDENTIFIED SPEAKER: Just observing.

17 THE CLERK: Okay. And you're here for the Three  
18 Arrows Capital hearing?

19 UNIDENTIFIED SPEAKER: Yes, Yes. I'm just here to  
20 observe. I'm not making an appearance.

21 THE CLERK: Okay. Thank you.

22 Judge?

23 THE COURT: Okay. Mute that line. It'll just be a  
24 listen only line.

25 THE CLERK: Okay.

1                   THE COURT: All right. Who's going to argue for the  
2 foreign representative?

3                   MR. MOHEBBI: Your Honor, that would be me, Mr.  
4 Mohebbi.

5                   THE COURT: Okay. Go ahead.

6                   MR. MOHEBBI: Thank you, Your Honor. Obviously, we're  
7 here on the foreign representative's motion to compel. I think  
8 Your Honor is uniquely familiar with the facts in this case and  
9 the efforts of the foreign representatives have made to secure  
10 compliance from the two founders, Mr. Su Zhu and Mr. Kyle  
11 Davies.

12                  Sorry. Just to refresh the record, on December 6th,  
13 2022, the Court granted the motion to serve subpoena on the  
14 founders. And on December 29th, Your Honor granted in part our  
15 motion to serve those subpoenas by alternative service. And it  
16 was granted in part as to Mr. Davies.

17                  As Your Honor noted in the order, perhaps it's  
18 unsurprising that "wishful thinking" that there would be  
19 compliance. There has not been compliance. Yet, we are keenly  
20 aware that Mr. Davies was served the subpoena; it was issued on  
21 January 5th. It was served via the methods that Your Honor  
22 allowed, and he did not respond. He did not file an objection  
23 despite our efforts to meet and confer.

24                  The one response we did get was from counsel  
25 purporting to represent him in Singapore, declining to have a

1 call or any sort of a discussion with us, but just saying they  
2 disagree essentially with the Court's order that there's  
3 jurisdiction over Mr. Davies, and that was pretty much it.  
4 That was pretty much the extent of the discussion. We served  
5 the motion to compel on them. We served the Court's orders on  
6 them and also the subpoena itself. Meanwhile, Mr. Davies is on  
7 CNBC. He's on Bloomberg. He's interviewing with magazines.  
8 He's tweeting nearly daily.

9 THE COURT: Did anybody ask him whether he was served  
10 with the subpoena?

11 MR. MOHEBBI: We served it directly on him and also  
12 his counsel.

13 THE COURT: No, that wasn't my question. My question  
14 is you say, on CNBC and -- has anybody --

15 MR. MOHEBBI: Oh.

16 THE COURT: -- in interviewing him, asked him the  
17 question whether he was served with a subpoena?

18 MR. MOHEBBI: Not that I've seen. I've not seen  
19 somebody directly ask him that in a media interview. But from  
20 our perspective, Your Honor, if I could speak candidly for a  
21 moment. I think what's happening here is incredibly  
22 disrespectful to the Court. It's incredibly disrespectful to  
23 this process. And frankly, from Mr. Davies' standpoint, it's  
24 incredibly disrespectful to the creditors of this company.

25 And he's in Indonesia or wherever, lodging these

1 verbal grenades on Twitter, yet refusing to have any meaningful  
2 discussions with the foreign representatives. And I think at a  
3 minimum, this Court has the power under Rule 7037 to issue an  
4 order compelling his compliance here. Obviously, we're not  
5 quite at the contempt phase of this yet. But we've taken steps  
6 at every moment here to ensure that we're giving him plenty of  
7 opportunity to comply, plenty of opportunity to have  
8 discussions. And he's just not doing it. And now --

9 THE COURT: May I ask you this, Mr. Mohebbi, I saw a  
10 headline in a blog a couple of days ago, reads, "Three AC  
11 Liquidators obtained extraterritorial summoning order for funds  
12 directors. Crypto hedge fund Three Arrows Capital's  
13 liquidators have secured what is thought to be the first  
14 extraterritorial summoning order from a British Virgin Islands  
15 court for the private examination of the fund's truant  
16 directors".

17 MR. MOHEBBI: Yeah.

18 MS. ORMAN: Can you tell me what, if any, orders have  
19 been obtained from the BVI Court?

20 MR. MOHEBBI: Absolutely, Your Honor. What that is  
21 referring to is what it says. It's an examination order that  
22 requires both directors to essentially show up and testify on  
23 March 14th. You'll have to forgive me if I'm butchering BVI  
24 law. It's not my specialty, but my understanding is that that  
25 order has been issued and as we put in our motion to compel.

1 Obviously, we're looking for compliance with the foreign  
2 representative's efforts to seek information. If the founders  
3 were to show up and comply and follow the order in the BVI,  
4 that would be satisfactory as long as they're meaningfully  
5 complying and we would accordingly stop pressing, in the  
6 various courts that we've been trying to press in, some basic  
7 cooperation.

8 So the answer is yes, there is an order there. That's  
9 just further sort of evidence of the foreign representative's  
10 diligent efforts to try to secure compliance of Mr. Davies. It  
11 just has not happened.

12 THE COURT: May I ask this?

13 MR. MOHEBBI: Sure.

14 THE COURT: When was the order issued? Is there a  
15 written opinion with it? At one of the initial hearings in  
16 this case, I think I asked some questions. And I'm aware that  
17 various countries laws, maybe the Cayman BVI, have a provision  
18 essentially where the directors of a company registered in that  
19 venue agree that they will submit to the jurisdiction of the  
20 Court. And I don't know whether it was you I asked. I asked  
21 about it and nobody knew the answer to it, whether that was  
22 true of BVI.

23 So I'm particularly interested in the basis on which  
24 the BVI court issued an order summoning Davies, and I assume  
25 Zhu as well, to testify. Is it under BVI law, and is there a

1 written -- let me say it this way. I want to see whatever the  
2 judge did.

3 MR. MOHEBBI: Sure.

4 THE COURT: I also would like to see the applications  
5 that were filed. I want to see all of the pleadings that were  
6 filed in support of whatever relief was granted by the BVI  
7 court. Let me just back up for a second. So obviously, I  
8 wrote an opinion. I authorized the alternative service and  
9 you've gone ahead and as best appears, served him by those  
10 alternative means.

11 MR. MOHEBBI: That's right.

12 THE COURT: In my view, I've not definitively resolved  
13 the issue of personal jurisdiction. And so I'm going to want  
14 to see whatever was filed in the BVI court, whatever the BVI  
15 court does before I rule in this. I'm going to take this under  
16 submission today.

17 MR. MOHEBBI: Sure, but --

18 THE COURT: But let me just finish.

19 MR. MOHEBBI: I'm sorry. I apologize.

20 THE COURT: In light of my prior opinion, it wouldn't  
21 be a giant step for me to order that he comply. You haven't  
22 sought sanctions at this stage. You asked for an order that he  
23 compel in compliance, okay. So let's assume I do that. And  
24 then when we get to the next stage and he doesn't comply, what  
25 happens then? Okay. Then you ask for contempt and whatever

1 form of relief that you're going to ask for that. And that  
2 will most definitely tee up the issue of personal jurisdiction,  
3 which I haven't definitively resolved. I resolved the issue of  
4 whether I believed I could authorize the issuance of a subpoena  
5 to him, and I did.

6 But there would be, I'll say, difficult issues. We'll  
7 see how difficult it would be to get through that next step.  
8 All right. And in your papers directly, you say, well, if you  
9 get this relief in BVI, well, then you're not going to be  
10 pressing it here. Well, that makes perfectly good sense. BVI  
11 would be the most logical place if that relief is available,  
12 and the Court awarded that relief because that's where the  
13 company is registered.

14 In my opinion, I certainly addressed their contacts  
15 with the United States. But that's kind of where I am. I  
16 mean, I was waiting to see whether somebody would ask whether  
17 you or your colleagues actually filed something telling me  
18 other than what I saw in a headline a few days ago, and I  
19 didn't see anything.

20 MR. MOHEBBI: Okay. So just to start from the outset,  
21 and Your Honor's comments were very well taken. I think we  
22 will submit to you the pleadings and the order. The order was  
23 issued on January 18th, so we'll submit that to you so you'll  
24 have that shortly after this hearing. I would also note that I  
25 totally agree with your framing of the analysis. This is just

1 a discovery order ordering compliance, which is the interim  
2 step before we get to the last step --

3 THE COURT: Right.

4 MR. MOHEBBI: -- which at that point, you're  
5 absolutely right, Your Honor, you would have to decide the  
6 question of personal jurisdiction. For what it's worth, and I  
7 know we're not here litigating that today, we believe we have  
8 very strong arguments that there is personal jurisdiction in  
9 the United States for Mr. Davies, and frankly, Mr. Zhu as well.

10 I know that the Rule 45 doesn't allow for it in the  
11 subpoena context, but certainly in terms of whether or not  
12 there's the analysis, there's a tremendous amount of contact  
13 with the United States that both defendants engaged in in  
14 conducting essentially their activities as directors of the  
15 company. So we do believe that if it becomes necessary to  
16 litigate that question, that we would be able to satisfy it.  
17 But to be very clear, the foreign representatives have never  
18 taken the position that we're taking steps just to take steps.  
19 We're taking steps because we legitimately need the information  
20 and we've tried everything to get it from --

21 THE COURT: I have no doubt about that at all.

22 MR. MOHEBBI: Yeah. So in any event. So we agree  
23 with you, Your Honor, and we will submit those materials to you  
24 unless there's anything else. I think I'd submit on that.

25 THE COURT: I have a vague recollection that I raised

1 a question at the first hearing about possible court-to-court  
2 protocols.

3 MR. MOHEBBI: Yeah.

4 THE COURT: And so I raised that again. And I think  
5 that the foreign representative counsel and BVI and here and  
6 Singapore I guess --

7 MR. MOHEBBI: Singapore, that's right.

8 THE COURT: -- should explore the issue -- should have  
9 a discussion about whether they want to propose a protocol for  
10 court-to-court communications. And I think I had asked before  
11 about who the judge in BVI was. And I think I was told, well,  
12 they just switched; I don't know who the judge is now. I think  
13 I was told that Justice Coomaraswamy was the judge in  
14 Singapore. Are there any other jurisdictions in which cross-  
15 border proceedings have been brought relating to Three Arrows?

16 MR. MOHEBBI: Yes, Your Honor. I believe now the  
17 Cayman Islands and Canada as well.

18 THE COURT: Okay.

19 MR. MOHEBBI: But I'll defer to Mr. Crumpler if I'm  
20 missing one there.

21 THE COURT: Mr. Crumpler, can you help me out on that?

22 MR. CRUMPLER: Of course, Your Honor. It's correct.  
23 It's Cayman, Canada, and the Seychelles that I'd recognize.  
24 Those three jurisdictions are somewhat less involved, shall we  
25 say, in the courts. That's more about seeking specific

1 discovery against crypto exchanges and things like that.

2 THE COURT: All right.

3 MR. CRUMPLER: (Indiscernible).

4 THE COURT: Who is the judge in Canada?

5 MR. CRUMPLER: I'm afraid I'd have to look that up,  
6 Your Honor.

7 THE COURT: Okay. And who's the judge in the Cayman?

8 MR. CRUMPLER: Same as well, Your Honor.

9 THE COURT: Okay.

10 MR. CRUMPLER: So Seychelles should really be testing  
11 me, so apologies.

12 THE COURT: I would just say that in other cases, I've  
13 previously had protocols with judges in Canada, judges in the  
14 Cayman. I'm not suggesting at all that anybody's trying to do  
15 this, but in multi-jurisdiction matters such as this, it's  
16 important to me, at least, to know that you're not picking and  
17 choosing where you think your best shot is, and then go to the  
18 other place and say well, Judge Glenn entered this order; you  
19 ought to do the same.

20 So I have found it helpful, in multi-jurisdictional  
21 matters such as this, where the courts -- I mean, Cayman I know  
22 I've had protocols with them and I've had protocols with  
23 Canada. I'm assuming BVI does as well. In common law  
24 jurisdictions it's much less of an issue. Seychelles, I really  
25 don't know about at all. But to me, it's unfortunate that I

1 had a read in a headline that a judge in BVI had entered a  
2 extraterritorial summoning order. Okay. Because I didn't hear  
3 it from any of you.

4 MR. MOHEBBI: (Indiscernible).

5 THE COURT: No, no. Stop.

6 MR. MOHEBBI: Sorry.

7 THE COURT: It's important that I know what's going on  
8 elsewhere in the world relating to Three Arrows. Okay.

9 MR. MOHEBBI: Understood. My learned colleague did  
10 just tell me that the BVI order is Exhibit E to the Crumpler  
11 Declaration that was filed --

12 THE COURT: Okay.

13 MR. MOHEBBI: -- with the motion. So that's in there.  
14 But if Your Honor would like, what I can do -- I do believe  
15 that there's been a cross-border protocol motion filed, I  
16 believe. But I have to double check that. But what I will do  
17 is after this, would it be fine just to do a general submission  
18 with a list of every single judge, every single jurisdiction  
19 just for your reference, or just some sort of a single page --

20 THE COURT: No, that would be fine. That would be  
21 fine.

22 MR. MOHEBBI: Okay. Perfect.

23 THE COURT: Okay.

24 MR. MOHEBBI: So we'll submit that.

25 THE COURT: All right. So submit that. And due

1 course, after I see that stuff, I will rule on -- because I  
2 think frankly, in light of my prior decision, this next step at  
3 least, is not that difficult for me. I think the more  
4 difficult issues come about if Davies doesn't comply. And then  
5 just to be clear, I expect your best showing of personal  
6 jurisdiction at that point.

7 MR. MOHEBBI: Understood.

8 THE COURT: Okay. All right. Anything else for  
9 today?

10 MR. MOHEBBI: Not from us, Your Honor.

11 THE COURT: Okay. Thank you very much.

12 US Trustee, Mr. Bruh, I realize you usually have a  
13 more laid back role in Chapter 15 cases.

14 MR. BRUH: Yeah. Your Honor, we have nothing to add  
15 to this. We were just monitoring the situation.

16 THE COURT: Okay. All right. Last chance. Anybody  
17 else want to be heard? All right. We're adjourned for today.  
18 Thank you very much.

19 MR. MOHEBBI: Thank you, Your Honor.

20 MR. BRUH: Thank you.

21 (Whereupon these proceedings were concluded at 2:20 PM)

22

23

24

25

C E R T I F I C A T I O N

I, Jennifer Bulger, certify that the foregoing transcript is a true and accurate record of the proceedings.



---

Jennifer Bulger

eScribers

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Date: March 3, 2023

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	<b>C</b>			
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